

## **Rule 25. Filing and Service**

### **(a) Filing.**

- (1) **Filing with the Clerk.** A paper required or permitted to be filed in a court of appeals must be filed with the clerk.

### **(2) Filing: Method and Timeliness.**

- (A) **In general.** Filing may be accomplished by mail addressed to the clerk, but filing is not timely unless the clerk receives the papers within the time fixed for filing.
- (B) **A brief or appendix.** A brief or appendix is timely filed, however, if on or before the last day for filing, it is:
- (i) mailed to the clerk by First-Class Mail, or other class of mail that is at least as expeditious, postage prepaid; or
  - (ii) dispatched to a third-party commercial carrier for delivery to the clerk within 3 days.
- (C) **Inmate filing.** A paper filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.
- (D) **Electronic filing.** A court of appeals may by local rule permit or require papers to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. A local rule may require filing by electronic means only if reasonable exceptions are allowed. A paper filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these rules.
- (3) **Filing a Motion with a Judge.** If a motion requests relief that may be granted by a single judge, the judge may permit the motion to be filed with the judge; the judge must note the filing date on the motion and give it to the clerk.
- (4) **Clerk's Refusal of Documents.** The clerk must not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or by any local rule or practice.
- (5) **Privacy Protection.** An appeal in a case that was governed by Federal Rule of Bankruptcy Procedure 9037, Federal Rule of Civil Procedure 5.2, or Federal Rule of Criminal Procedure 49.1 is governed by the same rule on appeal. All other proceedings are governed by Federal

Rule of Civil Procedure 5.2, except that Federal Rule of Criminal Procedure 49.1 governs when an extraordinary writ is sought in a criminal case.

**(b) Service of All Papers Required.** Unless a rule requires service by the clerk, a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal or review. Service on a party represented by counsel must be made on the party's counsel.

**(c) Manner of Service.**

(1) Service may be any of the following:

(A) personal, including delivery to a responsible person at the office of counsel;

(B) by mail;

(C) by third-party commercial carrier for delivery within 3 days; or

(D) by electronic means, if the party being served consents in writing.

(2) If authorized by local rule, a party may use the court's transmission equipment to make electronic service under Rule 25(c)(1)(D).

(3) When reasonable considering such factors as the immediacy of the relief sought, distance, and cost, service on a party must be by a manner at least as expeditious as the manner used to file the paper with the court.

(4) Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete on transmission, unless the party making service is notified that the paper was not received by the party served.

**(d) Proof of Service.**

(1) A paper presented for filing must contain either of the following:

(A) an acknowledgment of service by the person served; or

(B) proof of service consisting of a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served; and

(iii) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

(2) When a brief or appendix is filed by mailing or dispatch in accordance with Rule 25(a)(2)(B), the proof of service must also state the date and manner by which the document was mailed or dispatched to the clerk.

(3) Proof of service may appear on or be affixed to the papers filed.

**(e) Number of Copies.** When these rules require the filing or furnishing of a number of copies, a court may require a different number by local rule or by order in a particular case.

**Local Rule 25(a). Electronic Case Filing System.**

*With the exception of administrative matters, all cases filed in the Court are assigned to the Court's Case Management/Electronic Case Filing System (CM/ECF).*

**(1) Scope of Electronic Filing.** *Unless granted an exception for good cause or unless filing only a motion to withdraw from representation, counsel must file all documents in accordance with the requirements of this rule. Pro se litigants are not required to file documents electronically but may be authorized to file electronically in a pending case upon motion and compliance with the Court's CM/ECF registration requirements. Documents filed electronically must be filed in Portable Document Format (PDF). Text-searchable format is required for briefs and preferred for all documents. Except as provided below or ordered by the Court, paper copies of electronic documents are not required.*

**(A) New Cases.** *New petitions for review, applications for enforcement, petitions for permission to appeal, petitions for mandamus or prohibition, and motions to authorize successive post-conviction applications must be filed using one of the following options:*

**(i) Submit New Case through CM/ECF Utilities:** *File petition in electronic form by selecting "Submit New Case" under CM/ECF Utilities and uploading the petition as a new case. Paper copies are not required, but the petition must be served conventionally, outside the CM/ECF system. The petition is deemed filed as of the date the electronic document was received by the clerk's office.*

*OR*

**(ii) File in Paper Form:** *File the original petition in paper form and serve the petition conventionally, outside the CM/ECF system. The petition is filed as of the date the paper document was received in the clerk's office. Additional copies are not required.*

**(B) Briefs.** *Formal briefs must be filed and served electronically. In addition, counsel must file the paper copies required by Local Rule 31(d). The brief is deemed filed as of the date and time stated on the notice of docket activity for the electronic brief, provided that paper copies are mailed, dispatched to a third-party commercial carrier, or delivered to the clerk's office on the next business day. Service of the paper brief is not required if the brief was served electronically on counsel and on any party not represented by counsel.*

**(C) Administrative Records.** *The agency filing the administrative record in agency review or enforcement cases and in social security appeals must file the original or one certified copy of the record, either in paper form or through CM/ECF in electronic form.*

**(i)** *If the agency files the administrative record in electronic form, counsel filing the opening brief may adopt the administrative record in lieu of filing an appendix under section (D) below, file the required paper copies of the administrative record, and cite to the AR rather than the JA. The paper copies of the administrative record*

*should be produced using double-sided copying, and must be securely bound down the left side without obscuring text and be identified as the administrative record on white covers bound with each copy. In social security appeals, appellant's counsel must also file an appendix under section (D) below that contains any district court documents necessary for appellate review.*

*(ii) If the agency files the administrative record in paper form, counsel filing the opening brief must file an appendix in accordance with section (D) below.*

**(D) Appendices.** *Unless electronic and paper copies of the administrative record are filed in an agency review or enforcement case under (C) above or no appendix is required because a criminal appeal is proceeding under Anders v. California, electronic filing of either the full appendix or an appendix excerpt is required in accordance with option (i) or (ii) below. In addition, counsel must file the paper copies required by Local Rule 30(b)(4). The appendix is deemed filed as of the date and time stated on the notice of docket activity for the electronic filing of the appendix or appendix excerpt, provided that paper copies of the appendix are mailed, dispatched to a third-party commercial carrier, or delivered to the clerk's office on the next business day. Service of the paper appendix is not required if a full electronic appendix under option (i) was served on counsel and on any party not represented by counsel. Service of the paper appendix is required if an electronic appendix excerpt is used under option (ii).*

**Option (i):** *File the full appendix in electronic form, separately filing any sealed documents as a sealed appendix.*

**Option (ii):** *File an appendix excerpt in electronic form, that begins with a list of the excerpt contents and that includes the following excerpts from the appendix, with the same pagination and in the same order in which they appear in the paper appendix:*

- any sealed documents (file separately as a sealed appendix);*
- any documents available only in paper form in the record;*
- any documents filed by the parties in a social security case;*
- any pertinent opinion, findings, or recommendations of a magistrate judge or bankruptcy court;*
- the opinion and order or judgment being appealed; and*
- the notice of appeal.*

*Additionally under option (ii), counsel must cite to both the paper appendix and the docket entry and page number of the electronic record for all record references contained in the brief. For example, material located at page 81 of the joint appendix and at district docket entry 20, page 5, would be cited as JA 81; DE 20 at 5. Counsel using option (ii) may, without motion, exceed the length limitations for opening and response briefs by up to 200 words. If appellant uses option (ii), appellee may use the same option or may file the full electronic appendix under option (i).*

**(E) Vouchers.** *Criminal Justice Act and other payment vouchers are maintained as financial records and filed outside the CM/ECF system.*

**(2) Eligibility, Registration, Passwords.** *Attorneys who intend to practice in this Court should register as filing users of the Court's CM/ECF system. If permitted by the Court, a party to a pending civil case who is not represented by an attorney may register as a filing user of the Court's CM/ECF system solely for purposes of that case. A pro se party's filing user status will be terminated upon termination of the case or termination of the party's pro se status.*

*Completion of the Fourth Circuit Electronic Case Filer Application constitutes consent to electronic service of all documents as provided in this rule and the Federal Rules of Appellate Procedure. Filing users agree to protect the security of their passwords and immediately notify the PACER Service Center and the clerk if they learn that their password has been compromised. Filing users may be sanctioned for failure to comply with this provision.*

*A filing user may withdraw from participation in CM/ECF by providing the clerk with written notice of withdrawal. A filing user's withdrawal from participation in CM/ECF does not alter the requirement that documents be filed in compliance with this rule.*

- (3) ***Consequences of Electronic Filing.*** *Electronic transmission of a document to CM/ECF consistent with this rule, together with the transmission of a notice of docket activity from the Court, constitutes filing of the document under the Federal Rules of Appellate Procedure and the Court's local rules and constitutes entry of the document on the docket kept by the clerk under FRAP 36 and 45(b).*

*A document filed electronically is deemed filed at the date and time stated on the notice of docket activity from the Court. Unless otherwise directed by the Court, filing must be completed before midnight Eastern Time, as shown on the notice of docket activity, to be considered timely filed that day.*

*Before filing a document with the Court, a filing user must verify its legibility and completeness. When a document has been filed electronically, the official record is the electronic document stored by the Court, and the filing party is bound by the document as filed.*

*If an extension of time or leave of Court is required to file a document, a filing user should file the motion to extend filing time or other appropriate motion using the motion event and the underlying document using the document event. If the Court denies the motion, it will strike the underlying document. If the Court grants the motion, the underlying document will remain on the docket.*

- (4) ***Service of Documents by Electronic Means.*** *The notice of docket activity that is generated by the Court's electronic filing system constitutes service of the filed document on any registered CM/ECF users. Parties who are not registered for electronic service through CM/ECF must be served conventionally, outside the CM/ECF system, with a copy of any document filed electronically.*

*If a document (such as a sealed document or a new case) cannot be served electronically, the filer must serve the document conventionally, outside the CM/ECF system.*

*The notice of docket activity generated by the Court's electronic filing system does not replace the certificate of service required by FRAP 25(d).*

- (5) ***Entry of Court-Issued Documents.*** *Except as otherwise provided by local rule or Court order, all orders, decrees, opinions, judgments, and proceedings of the Court relating to cases filed and maintained in the CM/ECF system will be filed electronically in accordance with these rules, which will constitute entry on the docket kept by the clerk under FRAP 36 and 45(b).*

*Any order or other Court-issued document filed electronically without the original signature of a judge or authorized court personnel has the same force and effect as if the judge or clerk had signed a paper copy of the order.*

- (6) ***Attachments and Exhibits to Motions and Original Proceedings.*** *Unless the Court permits or requires traditional paper filing, filing users must submit in electronic form all documents*

*referenced as exhibits or attachments. Material should be excerpted to include only such portions as are germane to the matter under consideration by the Court. Excerpted material must be clearly and prominently identified as such. The Court may require parties to file additional excerpts or the complete document.*

- (7) **Sealed Documents.** Sealed material must be filed in accordance with Local Rule 25(c) and served conventionally, outside the CM/ECF system.*
- (8) **Retention Requirements.** Documents that are electronically filed and require original signatures other than that of the filing user must be maintained in paper form by the filing user for a period of three years after issuance of the Court's final mandate in the case. On request of the Court, the filing user must provide original documents for review.*
- (9) **Signatures.** The user log-in and password required to submit documents to the CM/ECF system serve as the filing user's signature on all electronic documents filed with the Court. They also serve as a signature for purposes of the Federal Rules of Appellate Procedure, the Court's local rules, and any other purpose for which a signature is required in connection with proceedings before the Court.*

*The name of the filing user under whose log-in and password the document is submitted must be preceded by an "s/" and typed in the space where the signature would otherwise appear.*

*No filing user or other person may knowingly permit or cause to permit a filing user's log-in and password to be used by anyone other than an authorized agent of the filing user.*

*Documents requiring signatures of more than one party must be electronically filed either by: submitting a scanned document containing all necessary signatures; representing the consent of the other parties on the document; identifying on the document the parties whose signatures are required and submitting a notice of endorsement by the other parties no later than three business days after filing; or any other manner approved by the Court.*

*Electronically represented signatures of all parties and filing users as described above are presumed to be valid signatures. If any party, counsel of record, or filing user objects to the representation of his or her signature on an electronic document as described above, he or she must, within 10 days, file a notice setting forth the basis of the objection.*

- (10) **Notice of Court Orders and Judgments.** Immediately upon the entry of an order, judgment, or opinion in a case assigned to CM/ECF, the clerk will electronically transmit a notice of docket activity to filing users in the case. Electronic transmission of the notice of docket activity constitutes the notice and service required by FRAP 36(b) and 45(c).*

*The clerk must give notice in paper form to a person who has not consented to electronic service in accordance with the Federal Rules of Appellate Procedure.*

- (11) **Technical Failures.** A party or attorney who is adversely affected by a technical failure in connection with filing or receipt of an electronic document may seek appropriate relief from the Court.*
- (12) **Hyperlinks.** Electronically filed documents may contain hyperlinks to: other portions of the same document or other documents filed on appeal; documents filed in the lower court that are part of the record on appeal; and statutes, rules, regulations, and opinions.*

*Hyperlinks do not replace citations to the appendix, record, or legal authority and are not considered part of the appellate record. Documents must contain standard citations in support of statements of fact or points of law, in addition to any hyperlink. The Court accepts no responsibility for the availability or functionality of any hyperlink and does not endorse any organization, product, or content at any hyperlinked site.*

**Local Rule 25(b). Use of Facsimile Equipment, Service, Certificate of Service.**

- (1) **Use of Facsimile Equipment.** Documents may be transmitted for filing by use of facsimile transmission equipment only when an emergency situation exists and advance permission has been obtained to use the clerk's office facsimile equipment. Several printing services in Richmond will accept documents by facsimile for filing with the Court. Their telephone numbers may be obtained from the clerk's office. When a facsimile copy is filed, the original, signed document need not be filed.
- (2) **Service.** Except as otherwise provided by local rule or Court order, service on a party represented by counsel must be on all counsel of record.
- (3) **Certificate of Service.** All documents must be accompanied by a valid certificate of service. The certificate of service of a brief should be bound with the brief as the last, unnumbered page. A certificate of service can be prepared in advance of actual service. If service is not actually accomplished in the manner and on the date stated in the certificate, an amended certificate of service is required.

**Local Rule 25(c) Confidential and Sealed Materials.**

- (1) **Certificates of Confidentiality.** At the time of filing any appendix, brief, motion, or other document containing or otherwise disclosing materials held under seal by another court or agency, counsel or a pro se party shall file a certificate of confidentiality.

  - (A) Record material held under seal by another court or agency remains subject to that seal on appeal unless modified or amended by the Court of Appeals.
  - (B) A certificate of confidentiality must accompany any filing which contains or would otherwise disclose sealed materials. The certificate of confidentiality shall:

    - (i) identify the sealed material;
    - (ii) list the dates of the orders sealing the material or, if there is no order, the lower court or agency's general authority to treat the material as sealed;
    - (iii) specify the terms of the protective order governing the information; and
    - (iv) identify the appellate document that contains the sealed information.
- (2) **Motions to Seal.** Motions to seal all or any part of the record are presented to and resolved by the lower court or agency in accordance with applicable law during the course of trial, hearing, or other proceedings below.

  - (A) A motion to seal may be filed with the Court of Appeals when:

    - (i) a change in circumstances occurs during the pendency of an appeal that warrants reconsideration of a sealing issue decided below;
    - (ii) the need to seal all or part of the record on appeal arises in the first instance during the pendency of an appeal; or
    - (iii) additional material filed for the first time on appeal warrants sealing.
  - (B) Any motion to seal filed with the Court of Appeals shall:

    - (i) identify with specificity the documents or portions thereof for which sealing is requested;
    - (ii) state the reasons why sealing is necessary;
    - (iii) explain why a less drastic alternative to sealing will not afford adequate protection; and
    - (iv) state the period of time the party seeks to have the material maintained under seal and how the material is to be handled upon unsealing.

(C) *A motion to seal filed with the Court of Appeals will be placed on the public docket for at least 5 days before the Court rules on the motion, but the materials subject to a motion to seal will be held under seal pending the Court's disposition of the motion.*

**(3) Filing of Confidential and Sealed Material.**

(A) **Appendices:** *When sealed material is included in the appendix, it must be segregated from other portions of the appendix and filed in a separate, sealed volume of the appendix. In criminal cases in which presentence reports are being filed for multiple defendants, each presentence report must be placed in a separate, sealed volume that is served only on counsel for the United States and for the defendant who is the subject of the report.*

(B) **Briefs, Motions, and Other Documents:** *When sealed material is included in a brief, motion, or any document other than an appendix, two versions of the document must be filed:*

(i) *a complete version under seal in which the sealed material has been distinctively marked and*

(ii) *a redacted version of the same document for the public file.*

(C) **Personal Data Identifying Information:** *Personal data identifying information, such as an individual's social security number, an individual's tax identification number, a minor's name, a person's birth date, a financial account number, and (in a criminal case) a person's home address, must be excluded or partially redacted from filings in accordance with FRAP 25(a)(5).*

(D) **Marking of Sealed and Ex Parte Material:** *The first page of any appendix, brief, motion, or other document tendered or filed under seal shall be conspicuously marked SEALED and all copies shall be placed in an envelope marked SEALED. If filed ex parte, the first page and the envelope shall also be marked EX PARTE.*

(E) **Method of Filing:**

(i) **Appendices:** *Local Rule 30(b)(4) sets forth the number of paper copies required for public and sealed volumes of the appendix. Sealed volumes are accompanied by a certificate of confidentiality or motion to seal, in both paper and electronic form. Electronic sealed volumes are filed using the entry SEALED APPENDIX, which automatically seals the appendix for Court access only.*

(ii) **Formal Briefs:** *Local Rule 31(d) sets forth the number of paper copies required for public and sealed versions of formal briefs. The sealed version is accompanied by a certificate of confidentiality or motion to seal, in both paper and electronic form. The electronic sealed version of the brief is filed using the entry SEALED BRIEF, which automatically seals the brief for Court access only.*

(iii) **Other Documents:** *Any other sealed document is filed electronically using the entry SEALED DOCUMENT, which automatically seals the document for Court access only. A certificate of confidentiality or motion to seal is also filed electronically.*

(F) **Method of Service:** *All sealed appendices, briefs, and documents must be served in paper form, because only the Court can access the sealed electronic appendix, brief, or document.*

(G) **Responsibility for Compliance:** *The responsibility for following the required procedures in filing confidential and sealed material rests solely with counsel and the parties. The clerk will not review each filing for compliance with this rule.*



*(H) **Public Access:** Unless filed under seal, case documents are publicly available on the Internet, except that in immigration and social security cases, only the Court's orders and opinions are available to the public on the Internet. Remote electronic access to other documents in immigration and social security cases is available only to persons participating in the case as CM/ECF filing users. Counsel should notify clients regarding the availability of filings on the Internet so that an informed decision may be made on what information is to be included in a public document filed with the Court.*

*Former I.O.P.-25.1 redesignated Local Rule 25(a) December 1, 1995; amended December 1, 1998, July 2, 2012, and October 1, 2015.*

*Former I.O.P.-25.2 redesignated Local Rule 25(b) December 1, 1995; amended December 1, 1998, and July 2, 2012. Local Rule 25(c) adopted April 16, 2007, upon amendment and renumbering of Local Rule 10(d); amended April 1, 2008, December 1, 2009, and July 2, 2012.*